

Court No. - 48

Case :- CRIMINAL APPEAL No. - 5815 of 2007

Appellant :- Collector And Another

Respondent :- State of U.P.

Counsel for Appellant :- Radhey Shyam Shukla, Sunil Kumar Srivastava

Counsel for Respondent :- Govt. Advocate, M.C. Umrao

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Ashutosh Srivastava, J.

**In Re: Criminal Misc. Second Bail Application No.3 of 2021
filed on behalf of the appellant No.1- Collector**

We have heard learned counsel for the applicant as well as learned A.G.A. for State.

Present application has been preferred for a direction to release the applicant on bail in Sessions Trial No. 164 of 2005 (State Vs. Collector and Others), arising out of Case Crime No. 1003 of 2004, under Sections 363, 366, 376(2)(g) IPC and Section 3(2)(5) SC/ST Act, P.S. Bilsanda, Distt. Pilibhit.

It has been averred in the affidavit filed in support of the bail application that the applicant has been falsely implicated in the present case. It is further contended on the strength of the custody certificate dated 07.04.2022 of the appellant issued by Jailer, Central Jail, Bareilly that the appellant has already undergone 20 years, 8 months and 18 days of imprisonment including remission. Prayer for bail of co-accused Ramvir has already been allowed by coordinate Bench of this Court vide order dated 15.04.2008. There is no likelihood of the appeal being heard in near future. In support of his contention, he has relied upon an order of the Supreme Court dated 14.5.2018 passed in Special Leave to Appeal (Crl) No. 1319 of 2018 (***Madan Singh Vs. State of Madhya Pradesh***). The said order of the Supreme Court reads as under:

"1. We have heard the learned counsels for the parties.

2. Leave granted.

3. Aggrieved by the refusal of the High Court to suspend the sentence against the accused appellant this appeal has been filed.

4. The accused who has been convicted under section 302/34 I.P.C. and sentenced to undergo rigorous imprisonment for life has undergone actual custody for a period of over seven years. The hearing of the appeal pending before the High Court is likely to take some time unless specifically expedited. We are not inclined to pass any such order.

5. Taking into account the period of custody suffered and the time within which the appeal is likely to be disposed of we are of the view that the accused appellant should be released on bail. We order accordingly. Consequently, the appellant is ordered to be released on bail to the satisfaction of the learned Additional Sessions Judge, Susner, District Shajapur, M.P. in connection with Sessions Trial No. 200/2010.

6. The learned Additional Sessions Judge, Susner, District Shajapur, M.P. is free to impose appropriate condition(s) as he deems fit.

7. Consequently, the order of the High Court is set aside and the present appeal is disposed of in the above terms."

Learned counsel for the applicant has further placed reliance on the order of the Supreme Court dated 01.10.2021 passed in Petition for Special Leave to Appeal (Crl.) No.5845/2021 (**Pintu vs. State of U.P.**). The said order of the supreme court reads as under:

"Taking into consideration the fact the the petitioner is reported to be in jail for more than 9 years and 9 months, his Criminal Appeal, pending adjudication before the High Court of Judicature at Allahabad, is not likely to be taken up for final disposal very soon, which fact could not be controverted by learned Additional Advocate General appearing for the State, we are inclined to grant bail to him.

The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court shall deem fit and appropriate to impose upon him. The Special Leave Petition is disposed of in the afore stated terms."

Learned counsel for the applicant has also placed reliance on the latest order of the Supreme Court dated 25th February, 2022 in Criminal Appeal No.308/2022 (**Saudan Singh vs. State of UP**) arising out of SLP (Crl) No.4633 of 2021. The relevant part of the order is reproduced herein below:-

"We have put to learned AAG and the learned counsel for the High Court that a list should be prepared of all cases where the person has served out a sentence of 14 years, is not a repeat offender, and in any case if in these cases at one go bail can be granted and cases remitted for examination under the Uttar Pradesh Prisoners Release on Probation Rules, 1938. In all these cases, there is a high possibility that if these people are released, they may not be even interested in prosecuting their appeals.

The second category of cases can be one where the person has served out more than 10 years of sentence. In these cases also at one go bail can be granted unless there are any extenuating circumstances against him.

We are quite hopeful that the High Court will adopt the aforesaid practice and thus prevent the Supreme Court to be troubled with such matters"

Similar view has also been reiterated by Hon'ble the Apex Court in *Brijesh Kumar @ Ramu v. State of U.P.*, (Criminal Appeal No. 540 of

2022, dated 1.4.2022), Vipul v. The State of U.P. (Special Leave to Appeal (Crl) No(s). 3114 of 2022, dated 8.4.2022) and Suleman v. State of U.P. (Criminal Appeal No.491/2022, dated 9.5.2022).

Learned AGA opposed the prayer for bail of the applicant but he could not dispute the incarceration of the applicant.

Considering the rival submissions of the learned counsel for the parties, facts and circumstances of the case and period of incarceration of the applicant, prima facie, without expressing any opinion on the merits and without prejudice to the right of the applicant to pursue this appeal or pray for remission as per law, we are of the view that the applicant is entitled to be released on bail.

Let the applicant- **Collector**, convicted and sentenced in Sessions Trial No. 164 of 2005 (State Vs. Collector and Others), arising out of Case Crime No. 1003 of 2004, under Sections 363, 366, 376(2)(g) IPC and Section 3(2)(5) SC/ST Act, P.S. Bilsanda, Distt. Pilibhit, be released on bail on furnishing personal bond and two sureties each of the like amount to the satisfaction of the concerned Chief Judicial Magistrate, subject to furnishing undertaking that he will co-operate in the hearing of the appeal.

The realization of fine shall remain stayed during the pendency of the appeal.

On acceptance of his bail bonds, the lower court shall transmit photostat copies thereof to this Court for being kept on the record of this appeal.

Let this appeal be listed for 'final hearing' in due course.

Order Date :- 15.6.2022

Abhishek Singh